STATE OF MICHIGAN

COURT OF APPEALS

ROBERT SHIELDS, Personal Representative of the Estate of TODD M. SHIELDS, a legally incapacitated person,

Plaintiff-Appellant,

v

FARMERS INSURANCE GROUP, a/k/a FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

JUN 2 7 1990

No. 115032

Before: Michael J. Kelly, P.J., and Wahls and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals by right from a January 24, 1989, Huron Circuit Court order granting defendant's motion for summary disposition and ruling that defendant was entitled under MCL 500.3109; MSA 24.13109, to subtract from the no-fault benefits owed plaintiff any medical benefits provided or required to be provided to plaintiff by the federal government pursuant to 10 USC 1071 et seq. We affirm.

Plaintiff was severley injured in a motor vehicle accident in Michigan. Plaintiff originally brought suit to recover no-fault benefits against three separate motor vehicle insurers, including defendant. Defendant was the insurer of the owner of the vehicle plaintiff was occupying when he was injured. It was eventually resolved in a series of stipulations by the parties that defendant was the highest priority insurer. Plaintiff was a member of the military and was home "on leave" at the time of the accident and was entitled to medical benefits pursuant to 10 USC 1071 et seq. Plaintiff was not the insured under defendant's policy of insurance, the spouse of the insured, or a relative of either.

In Crowley v DAIIE, 428 Mich 270; 407 NW2d 372 (1987), the Supreme Court held that benefits paid pursuant to 10 USC 1071 et seq. were subject to setoff under § 3109(1) when the injured party was not the owner of the vehicle subject to coverage under the no-fault act. See Tatum v GEICO, 431 Mich 663, 667-668; 431 NW2d 391 (1988). In Tatum, which the Supreme Court held in abeyance pending its decision in Crowley, the Supreme Court held that "medical benefits paid pursuant to 10 USC 1071 et seq. constitute 'other health and accident coverage' under the no-fault act," specifically MCL 500.3109a; MSA 13109(1), and that "when benefits of an insured fall within § 3109(1) and § 3109a of the act, an insurer must offer a coordinated policy." Tatum, supra, p 665, emphasis added. When an insurer fails to offer coordinated coverage to its insured as required by § 3109a, that insurer is not entitled under MCL 500.3109; MSA 24.13109, to subtract federal benefits provided or required to be provided from benefits the insurer owes to the insured, a spouse of the insured, or a resident-relative of either. Tatum, supra, 670-672.

We agree with the trial court that plaintiff's no-fault benefits do not fall within § 3109a because plaintiff was not the insured under defendant's policy of insurance, a spouse of the insured, or a resident-relative of either. Crowley, supra, pp 278-281. In other words, § 3109a does not apply because plaintiff was not a person to whom defendant was required to offer coordinated benefits, and was not specially related to such a person. See id.; Tatum, supra, pp 670-672; MCL 500.3109a; MSA 24.13109(1). Therefore, we conclude, as did the trial court, that Crowley, rather than Tatum, is controlling in this case. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ David H. Sawyer